

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

United States of America

Cr. No. 3:11-2133-CMC

v.

Antonio Hill,

Opinion and Order

Defendant.

Defendant has filed a motion for relief under 28 U.S.C. § 2255. ECF No. 165. Defendant contends he is entitled to relief pursuant to the recent Supreme Court decision in *Rehaif v. United States*, \_\_\_ U.S. \_\_\_, 139 S.Ct. 2191 (2019). The Government has filed a response in opposition, arguing Defendant's motion is successive and he has not received permission to file such a motion from the Fourth Circuit. ECF No. 167.

Defendant filed a prior motion for relief pursuant to 28 U.S.C. § 2255 on August 1, 2013. ECF No. 87. On October 2, 2013, after full briefing, the court granted the Government's motion to dismiss and the § 2255 motion was dismissed with prejudice. ECF No. 95.

On June 19, 2020, Defendant filed a *pro se* motion for appointment of counsel regarding "concerns of my 922(g) charge." ECF No. 158. This court entered an Order on June 23, 2020, appointing counsel and, in an abundance of caution, deeming the *pro se* motion a § 2255 motion so that it would be timely filed within a year of the *Rehaif* decision. ECF No. 159. Counsel filed the instant motion August 17, 2020. ECF No. 165.

The current motion is a successive § 2255 motion. Defendant's failure to seek permission to file a second or successive motion in the appropriate court of appeals prior to the filing of the motion in the district court is fatal to the outcome of any action on the motion in this court. Prior

to filing a second or successive motion under § 2255, Defendant must obtain certification by a panel of the Fourth Circuit Court of Appeals allowing him to file a second or successive motion. As provided in 28 U.S.C. § 2244, “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). *See also* Rule 9 of the Rules Governing 2255 Proceedings (“Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion . . . .”). This he has not done.

The requirement of petitioning a court of appeals (in this instance, the Fourth Circuit) for permission to file a second or successive motion is jurisdictional. Therefore, Defendant’s failure to move for permission in the Fourth Circuit Court of Appeals prior to filing this § 2255 motion is fatal to any action in this court. Because the District Court has no jurisdiction, this court is unable to reach the merits of Defendant’s motion. Therefore, this motion is **dismissed**.

**IT IS SO ORDERED.**

s/Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
Senior United States District Judge

Columbia, South Carolina  
September 2, 2020